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JUN 30 1941
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Supreme Court of the United States

OCTOBER TERM, 1941.

No. 226

UNITED STATES OF AMERICA, ACTING ON THE RELATION OF EDMOND C. FLETCHER, AND THE SAID EDMOND C. FLETCHER, INDIVIDUALLY, PETITIONER,

VS.

JOHN H. FAHEY, THOMAS D. WEBB, FRED W. CATLETT, WILLIAM F. STEPHENSON, PATRICK J. MALONEY, AND ROBERT L. NAGLE.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, AND BRIEF IN SUPPORT THEREOF.

United States of America,
Acting on the Relation
of Edmond C. Fletcher,
and the Said Edmond C.
Fletcher, Individually,
By EDMOND C. FLETCHER,
Pro se,
Petitioner.

103 C Street, S. E.,
Washington, D. C.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, AND BRIEF IN SUPPORT THEREOF.

To the Honorable the Chief Justice of the United States and Associate Justices of the Supreme Court of the United States:

The United States of America, acting on the relation of Edmond C. Fletcher, and the said Edmond C. Fletcher, individually, petitioner, respectfully prays that a writ of

certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia, entered in the above-entitled cause on February 24, 1941, affirming the judgment of the District Court of the United States for the District of Columbia; petitioner's petition for rehearing denied on March 19, 1941.

SUMMARY STATEMENT OF MATTER INVOLVED.

On June 13, 1933, the Congress enacted a law commonly known as the "Home Owners' Loan Act of 1933" (48 Stat. 128 *et seq.*), the material provisions of which are set out in the amended complaint (R. 3-4). This act, among other things, authorized and directed the Federal Home Loan Bank Board to *create a corporation* to be known as the Home Owners' Loan Corporation, with a capital stock of not exceeding the sum of $200,000,000, to be subscribed and paid for by the Secretary of the Treasury on behalf of the United States. The then existing Federal Home Loan Bank Board was composed of the above-named respondents, all residing in the city of Washington, District of Columbia. Thereafter and on June 14, 1933, said board, in an effort to create such corporation, adopted by resolution and spread upon its records in its office in the city of Washington an undated and unsigned paper writing called a "Charter," conceived and drafted by its general counsel, Horace Russell, as a charter for the Home Owners' Loan Corporation, with a capital stock of $200,000,000, divided into 2,000,000 shares, each having a par value of $100. This paper writing is pleaded *in haec verba* in said complaint (R. 4-5).

On the following day, June 15, 1933, the respondents, acting in the name of the Federal Home Loan Bank Board, well knowing that said board had failed to procure from any sovereign, federal or state, a corporate charter for and in the name of the Home Owners' Loan Corporation, nor taken any steps toward securing such a charter, ad-

dressed and delivered a letter dated June 15, 1933, to the Secretary of the Treasury of the United States in Washington, together with a copy of said resolution, by which they represented to said Secretary of the Treasury that they had created the Home Owners' Loan Corporation as a *bona fide* body corporate, on June 14, 1933, with a capital stock of $200,000,000, divided into 2,000,000 shares, each having a par value of $100; and by said letter, did make a call upon the Secretary of the Treasury to subscribe, on behalf of the United States, for all of the purported capital stock of such pretended corporation, and to make payment therefor in the aggregate sum of $200,000,000; and, by said letter, made claim or call upon said Secretary of the Treasury for a payment of the immediate sum of $1,000,000 to said respondents, as the officers of the pretended Home Owners' Loan Corporation, as part payment for such purported capital stock (R. 6).

On June 19, 1933, the Acting Secretary of the Treasury, Mr. Dean Atcheson, by letter to the said Federal Home Loan Bank Board, subscribed for all of said purported stock on behalf of the United States, at and for the price of $200,000,000 (R. 7) and he thereafter paid, or caused to be paid, out of the Treasury of the United States, said sum of $1,000,000 to said respondents, acting in the name of said pretended Home Owners' Loan Corporation (R. 7). Thereafter and in the months of September, October, November, December, 1933, January, February, March, April, May, June, July, and August, 1934, said Federal Home Loan Bank Board, acting through the respondents, made other calls or claims upon the Secretary of the Treasury to make further payments of money for said purported capital stock, and such payments were actually made out of the Treasury of the United States, in the aggregate sum of $199,000,000, to said respondents, acting in the name of said pretended corporation, by the authority and direction of the Secretary of the Treasury (R. 9-12).

Thereafter and on May 18, 1939, petitioner brought a suit in the district court below against the respondents herein, as defendants therein, under Sections 231, 232, 234, and 235, Title 31, United States Code (1934 Ed.), to recover from said respondents the sum of $400,000,034, or double the damages sustained by the Government, plus penalties, as authorized by the provisions of Section 231, *supra*. Petitioner's amended complaint specifically alleged the above and foregoing facts (R. 2-13), and further alleged that said defendants then and there well knew that their said claims or calls and representations to the Secretary of the Treasury were false, fictitious, and fraudulent, and that the several acts so committed by them, in obtaining or aiding to obtain the payment or approval of the several claims upon and against the Government of the United States, and in thereby obtaining said sum of $200,000,000 out of the Treasury of the United States, had caused a loss and damage to the Government of the United States in the aggregate sum of $200,000,000 (R. 12).

On May 27, 1939, respondents filed their joint motion to dismiss the amended complaint on the sole ground, to-wit, "that it failed to state a claim against said defendants upon which relief can be granted" (R. 14). On October 31, 1939, the trial court, after argument on the motion to dismiss, rendered an opinion in writing (R. 15). On November 9, 1939, it entered an order and judgment sustaining the motion and dismissing the complaint (R. 15). An appeal was taken therefrom to the court of appeals below (R. 18).

On February 24, 1941, the court of appeals affirmed the judgment of the district court below (R. 19). On March 19, 1941, it considered and denied petitioner's petition for a rehearing (R. 25). The time for filing this petition was extended, by order of Mr. Justice Black, to and including June 30, 1941.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

The writ prayed should be allowed by this court for the following reasons:

1. *Because of the important question of practice.* In this case the court of appeals below, in its opinion, refused to consider or even mention the question of whether the undated and unsigned paper writing called a "Charter," conceived and drafted by an attorney for the Federal Home Loan Bank Board, and adopted of record by said board on June 14, 1933 (set out in the petitioner's complaint), created a body corporate known as the Home Owners' Loan Corporation, within the meaning of the language in Section 4 (a) of the Home Owners' Loan Act of 1933, to-wit, "The board is hereby authorized and directed to create a corporation to be known as the Home Owners' Loan Corporation." This important question was expressly presented to the court of appeals by the record and assignment of errors as to the action of the trial court (which evaded the issue). The object of taking an appeal to the court of appeals below was to secure a judicial construction of the alleged charter together with the statute, *supra;* but that court also evaded the momentous issue, yet retained jurisdiction of the case and, on the merits, affirmed the judgment of the district court below (R. 19). Such practice is a departure from the accepted and usual course of judicial proceedings in an appellate court. It is, in effect, a destruction of the substantial rights of the petitioner, and, as was said by this court in *Lutcher & Moore Lumber Co.* v. *Knight*, 217 U. S. 267, is a denial to petitioner of his "day in court," or, in other words, is equivalent to condemning him without affording him an opportunity to be heard. Such action of the court of appeals below is an avoidance of its judicial duty, and should be regulated by this court, as was done in *Liberty Oil Co.* v. *Condon National Bank*, 260 U. S. 235, 245, and *Twist* v. *Prairie Oil & Gas Co.*, 274 U. S. 684, 692, and *Lutcher & Moore Lumber Co.* v. *Knight, supra.*

2. The court of appeals below has decided a question of general importance not only to the Government of the United States, to the extent of $400,000,000 in the case at bar, but to more than 1,000,000 home owners throughout the United States, all of whom have pledged their homelands as collateral to the so-called Home Owners' Loan Corporation, and are paying thereon $600,000 per day. This question has not been, but should be, settled by this Honorable Court.

3. The court of appeals below has not given proper effect to the applicable decisions of this court in respect to the creation of corporations in the United States. This court has held in *Ashley* v. *Ryan*, 153 U. S. 436, 441, that

> "A franchise is a right, privilege, or power of public concern, which ought not to be exercised by private individuals at their mere will and pleasure, but should be reserved for public control and administration. * * * No persons can make themselves a body corporate and politic without legislative authority."

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued by this court, directed to the United States Court of Appeals for the District of Columbia, commanding that court to certify and send to this court, for review and determination, a full and complete transcript of the record and proceedings in the case numbered and entitled on its docket as "United States of America, Acting on the Relation of Edmond C. Fletcher, and the Said Edmond C. Fletcher, Individually, Appellant, v. John H. Fahey *et al.*, Appellees, No. 7568," and that the judgment of the court of appeals below be reversed by this court, and that your petitioner have such other and further relief in the premises as to this court may seem just and proper; and your petitioner will ever pray.

United States of America,
Acting on the Relation
of Edmond C. Fletcher,
and the Said Edmond C.
Fletcher, Individually,

By EDMOND C. FLETCHER,

Pro se,
Petitioner.